

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CR 09-0902 WJ

REYNALDO ROMERO-LEON

Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Defendant's post-judgment Motion for Judicial Review (Doc. 120), which seeks reconsideration of an order (Doc. 55) entered on April 19, 2010. Defendant asserts that the Court erred in denying his motion to suppress evidence. He asks the Court to hold an evidentiary hearing on the matter.

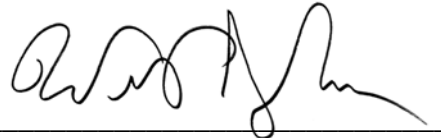
The Court entered judgment (Doc. 110) on Defendant's conviction and sentence on May 11, 2011, and the Court of Appeals for the Tenth Circuit affirmed the judgment on July 10, 2012 (Doc. 118). Defendant states in his motion that he is "waiting on the results of these review to file a Motion pursuant to 28 U.S.C. § 2255."

The relief that Defendant seeks--reconsideration of the denial of his suppression motion and, presumably, vacation of his conviction--if available, must be pursued under 28 U.S.C. § 2255. The terms of § 2255 provide the exclusive avenue for an attack on a federal criminal conviction or sentence. *See Baker v. Sheriff of Santa Fe County*, 477 F.2d 118, 119 (10th Cir. 1973); *Williams v. United States*, 323 F.2d 672, 673 (10th Cir. 1963) (§ 2255 "supplants habeas corpus"). Defendant's claims are expressly contemplated by § 2255: relief is available where "the sentence was imposed in violation of the Constitution or laws of the United States," § 2255, and his pro se characterization

of his claims as seeking reconsideration of an interlocutory order is not dispositive, *see Roman-Nose v. New Mexico Dep't of Human Serv.*, 967 F.2d 435, 436-37 (10th Cir. 1992).

In this instance, the Court declines to construe Defendant's motion for review as a motion under 28 U.S.C. § 2255. *See United States v. Kelly*, 235 F.3d 1238, 1242 (10th Cir. 2000); *United States v. Duggins*, 478 F. App'x 532, 533 (10th Cir. 2012). It appears from the record that Defendant has abundant time remaining in which to file a § 2255 motion, *see United States v. Burch*, 202 F.3d 1274, 1279 (10th Cir. 2000), and he has clearly expressed his intention to file such a motion. Because the relief that Defendant seeks must be brought in a motion under § 2255, the Court will deny his motion for review.

IT IS THEREFORE ORDERED that Defendant's Motion for Judicial Review (Doc. 120) is DENIED.

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UNITED STATES DISTRICT JUDGE